

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ARTHUR JACKSON, III** : **NO. 02-3230**  
**V.** : **CIVIL ACTION**  
**DELAWARE COUNTY ET AL** : **JURY TRIAL REQUESTED**

**NOTICE OF MOTION**

**TO:** John L. Rollins, Esq.  
Howard, Rollins and Jones  
1319 South Broad Street  
Philadelphia, PA 19147

You are hereby notified on this 16th day of October, 2002 that the attached Motion to Set Aside Entry of Default pursuant to Federal Rule of Civil Procedure 55 is being filed with the Court. According to Local Rule 7.1(c), if you wish to oppose said Motion, you must serve a brief in opposition, together with such answer or other response, within fourteen (14) days after service of the enclosed Motion. In the absence of a timely response, the Motion may be treated as uncontested.

**DIORIO & SERENI, LLP**

**BY:** \_\_\_\_\_  
**ROBERT M. DIORIO**  
**Attorney I.D. No.: 17838**  
**CHRISTOPHER R. MATTOX**  
**Attorney I.D. No.: 65874**  
Front & Plum Streets  
P.O. Box 1789  
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(610) 565-5700  
Attorneys for Defendants

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**ORDER**

AND NOW this            day of            2002, upon due consideration of Defendants' Motion to Set Aside Default and Plaintiff's response thereto it is hereby ORDERED and DECREED that said Motion is GRANTED.

**BY THE COURT:**

\_\_\_\_\_  
**Michael M. Baylson** **J.**

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|                              |          |                             |
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| <b>V.</b>                    | <b>:</b> | <b>CIVIL ACTION</b>         |
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**DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT**

Defendants, by and through their attorneys, Robert M. DiOrio and Christopher R. Mattox, hereby request this Honorable Court to set aside the Clerk's Entry of Default for the following reasons:

1. On 05/26/02 a complaint was filed on behalf of Arthur Jackson alleging civil rights and negligence claims against the Defendants for not receiving medication while incarcerated at the George W. Hill Correctional Facility (formerly known as Delaware County Prison) which resulted in a fall on May 28, 2000. See Docket entries attached as Exhibit "A".
2. Summonses were issued and mailed to Plaintiff's counsel by the Clerk's office on May 26, 2002. See exhibit "A".
3. On 09/19/02 a Praecipe to Issue Summons was filed by Arthur Jackson. See exhibit "A"
4. On 09/19/02 two Alias Summonses were issued as to Wackenhut Corrections Corporation and Wackenhut Corporation. See exhibit "A".
5. On 9/20/02 Summons was returned as executed by Arthur Jackson, III as to all Defendants indicating service on 9/17/02. See exhibit "A".

6. On 10/09/02 Plaintiff filed a Motion for Default. See exhibit "A".
7. On 10/10/02 Plaintiff filed an Amended Motion for Default. See exhibit "A".
8. Defendants did not receive a copy of either Motion.
9. Defense counsel became aware of the default when checking the docket for service of all Defendants on 10/15/02.
10. Dr. Friedrich, Dr. Carrillo and Dr. Holland-Hull were not working at the prison on Sept. 17, 2002 when all Defendants were allegedly served.
11. Defense counsel is not authorized to accept service for these individuals.
12. Defense counsel was awaiting service of all Defendants before filing a responsive pleading.
13. Defense counsel has been authorized to file a responsive pleading as to all Defendants except Dr. Friedrich, Dr. Carrillo and Dr. Holland-Hull.
14. Federal Rule of Civil Procedure 55 authorizes the Court to set aside an Entry of Default for good cause.
15. In determining whether there is good cause, the Court should consider: (a) the Defendant's culpable conduct; (b) prejudice to the Plaintiff if the default is set aside; (c) the existence of a meritorious defense; (d) whether entry of default would bring about a harsh or unfair result; (e) whether the Defendant took quick action to correct the default.
16. There is good cause to set aside the default in this case because: (a) three other Defendants have yet to be served with a copy of the Complaint in this matter although admittedly the Complaints have been left at the prison; (b) Defense Counsel was merely waiting until all Defendants were served to respond to the Complaint (c) there is no

prejudice to the Plaintiff if the default in this matter is set aside as Plaintiff has taken no action with respect to this Complaint since it was filed on May 26, 2002; (d) the Defendants have a number of meritorious defenses to the Complaint as set forth fully in the affirmative defenses to Plaintiff's Complaint contained within their Answer; (e) the Entry of Default would bring about a harsh or unfair result in that the Defendants, would be penalized for a legitimate and excusable delay in filing a responsive pleading; (f) Defense counsel has taken quick action to correct this Default by filing an Answer to Complaint; (g) there is no prejudice to the Plaintiff by allowing the Defendants to file their responsive pleading at this juncture.

17. Under cover of a separate filing, Defense counsel has filed an Answer with Affirmative Defenses to Plaintiff's Complaint.
18. Accordingly, the Defendants respectfully requests this Honorable Court to grant his Motion to Set Aside Entry of Default.

Respectfully submitted,

**DIORIO & SERENI, LLP**

Date: October 16, 2002

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**ROBERT M. DIORIO**

Attorney I.D. No.: 17838

**CHRISTOPHER R. MATTOX**

Attorney I.D. No.: 65874

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**CERTIFICATE OF SERVICE**

We, Robert M. DiOrio and Christopher R. Mattox, attorneys for Defendants, hereby certify that a true and correct copy of the foregoing Defendants' Motion to Set Aside Entry of Default was sent by regular mail first-class postage prepaid and facsimile, on the 16<sup>th</sup> day of October 2002 to the following:

John L. Rollins, Esq.  
Howard, Rollins and Jones  
1319 South Broad Street  
Philadelphia, PA 19147

**Via Hand-delivery**  
The Honorable Michael M. Baylson  
Room 4001  
U.S. District Court  
601 Market Street  
Philadelphia, PA 19106

Respectfully submitted,

**DIORIO & SERENI, LLP**

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**ROBERT M. DIORIO**  
**Attorney I.D. No.: 17838**  
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